HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT APPEAL NO.787 OF 2006

Between:

Andhra Pradesh State Electricity Board
. . .Appellant

AND

Ch.Pedabapulu
. . .Respondent

Counsel for the appellant : Shri G.Vidyasagar

Counsel for the respondent : Shri M.Panduranga Rao

Dated: 21st July, 2006

: JUDGMENT :

PER G.S.SINGHVI, CJ

This appeal is directed against order dated 06-07-2005 passed by the learned Single Judge in W.P.No.11538 of 1994 whereby he refused to interfere with the punishment of stoppage of one increment without cumulative effect imposed on the writ petitioner (respondent herein) but directed the non-petitioner (appellant herein) to pay full salary and allowances to the respondent for the period of suspension after deducting the subsistence allowance already paid.

The Facts:

While he was holding the post of Assistant Executive Engineer in the service of erstwhile Andhra Pradesh State Electricity Board, a criminal case was registered against the respondent by the Anti-Corruption Bureau on 11-1-1980 on the allegation of possessing disproportionate assets. Thereafter, by an order dated 7-1-1989, the competent authority of the Board placed the respondent under suspension. He was reinstated on 7-3-1991. In the meanwhile, a regular departmental enquiry was instituted against him. Two of the charges levelled against him were that he had failed to intimate the Board about acquisition and disposal of movable and immovable properties by way of purchase and sale in his name or in the name of his spouse or legal heirs and that he had resorted to speculative activities and indulged in money lending business. The Superintending Engineer (Enquiry Cell), who was appointed as enquiry officer submitted report dated 30-9-1991 with the finding that both the charges have been proved against the delinquent. The

Chairman of the Board accepted the findings of the enquiry officer and ordered issue of show cause notice to the respondent proposing the punishment of stoppage of one increment without cumulative effect besides treating the period of suspension as leave of the kind due. The respondent filed reply to contest the notice. The salient features of his reply were:

1) he had put in a total service of 22 years in the Board and all along he maintained unblemished record and worked sincerely and consciously to the entire satisfaction of his superiors;
2) for non-intimation of assets position to the Board the punishment earmarked in Board's circular Memo dated 1-5-89 is "censure". While highlighting the rule position he prayed that his case may be reviewed leniently to meet the ends of justice;
3) as regards to charge III, his assets were established with supporting documentary evidence within the legal limits of authority which were accepted by the Board in toto. No transaction was carried out with any person who has got transaction with Board directly or indirectly and as such causing embarrassing situation to Board does not arise under any circumstances or by any stretch of imagination;
4) the interests of Board were not at jeopardy on any occasion or at any time as there was no personal gain occasioned in discharging of official duties in his case; and in view of the circumstances explained above, he requested the Board to exonerate him and drop further action proposed against him.

After considering his reply, the Chairman of the Board decided to confirm the proposed penalty besides treating the period of

suspension as leave of the kind due. The order of Chairman was communicated to the respondent by Principal Secretary of the Board vide memo dated 28-4-2003. Appeal preferred by respondent against order of punishment was disposed of by the Board.

The respondent challenged the order of punishment as also the appellate order on various grounds set out in the writ petition. He pleaded that decision of the Chairman to treat the period of suspension as leave of the kind due is contrary to G.O.Ms.No.182 dated 31.10.1992 vide which proviso had been added to Rule 54-B of the Fundamental Rules.

The learned Single Judge declined to interfere with the substantive punishment imposed on the respondent, but held that the decision of Chairman to treat the period of suspension as leave of the kind due was legally unsustainable in view of G.O.Ms.No.182 read with G.O.Ms.No.59, dated 27-03-1995.

Shri G.Vidyasagar produced a copy of B.P.(P & G. Ser.) Ms.No.44 dated 20-5-1997 to show that for the first time the Board had adopted G.O.Ms.No.182 dated 31-10-1992 and G.O.Ms.No.59 dated 27-3-1995 in 1997 and argued that the learned Single Judge committed a serious error by applying those G.Os. for nullifying the decision of the Chairman in the matter of treatment to be meted out to the period during which the respondent remained under suspension. Learned counsel submitted that the decision of the Board is not retrospective in character and, therefore, the same cannot be applied to the disciplinary proceedings which had been finalized before 20-5-1997.

Shri M. Panduranga Rao, learned counsel for the respondent, to whom copy of B.P. (P & G. Ser.) Ms.No.44 dated 20-5-1997 was made available in the Court, could not controvert the argument of the learned counsel for the appellant.

In view of the above, it must be held that the learned single

Judge committed an error by applying the two G.Os. to the respondent's case and the other under challenge is liable to be set aside.

However, the aforementioned conclusion is, in our opinion, not sufficient to sustain the direction given by the Chairman of the Board that the period during which the respondent remained under suspension should be treated as leave of the kind due. A reading of Memo dated 28-4-2003 shows that the Chairman of the Board did issue notice to the respondent not only in respect of the proposed penalty but also called upon him to show cause as to why the period of suspension be not treated as leave of the kind due, but without adverting to the reply filed by the respondent and without taking into consideration the total period of service rendered by him, his past record and the impact of misconduct found proved against him, the Chairman mechanically directed that the period of suspension be treated as leave due.

There can be no doubt that while deciding the issue of nature of penalty to be imposed on the respondent and the treatment to be meted out to the period of suspension, Chairman of the Board was discharging quasi-judicial function. Therefore, he was duty bound to record reasons for treating the entire period of suspension as leave of the kind due. However, the fact of the matter is that Chairman of the Board did not consider the representation made by the writ petitioner in a correct perspective and did not record reasons for indirectly depriving the petitioner of the remaining salary and allowances. Therefore, we are inclined to nullify order dated 28-4-1993 to that extent with the direction that the competent authority shall pass fresh order after considering the relevant factors like the total period of service rendered by the respondent, his past record, the nature of misconduct found proved and its impact on the discipline of the

establishment.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside. Memo dated 28-4-1993 is quashed to the extent the period of suspension has been treated as leave of the kind due. Memo dated 20-10-1993 issued on the basis of the decision taken by the Appellate Authority is also quashed to that extent. Managing Director, Central Power Distribution Company of Andhra Pradesh Limited, Hyderabad shall now reconsider the issue of treatment to be meted out to the period during which the respondent was kept under suspension i.e. 7-1-1989 to 7-3-1991 and pass appropriate order in accordance with law. The officer concerned is expected to reconsider the matter and pass a reasoned order within a period of three months from the date of receipt of a copy of this order.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY, J

July 21, 2006

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